

1 HONORABLE RICHARD A. JONES
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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 HANNIBAL ABDULLA-EL,

12 Plaintiff,

13 v.

14 SEATTLE UNIVERSITY

Defendant.

CASE NO. C14-684RAJ

ORDER

15 This matter comes before the court on pro se plaintiff's motion for
16 reconsideration. Dkt. # 12.

17 On May 14, 2014, the court entered an order to show cause why this court should
18 not dismiss the case for failing to allege a basis in subject matter jurisdiction because
19 plaintiff "has not alleged facts giving rise to a plausible cause of action cognizable under
20 federal law, nor does it appear that the parties are residents of different states and that the
21 amount in controversy exceeds \$75,000. *See* 28 U.S.C. § 1331 (original jurisdiction over
22 claims arising under federal law); 28 U.S.C. § 1332 (federal jurisdiction extends to "all
23 civil actions where the matter in controversy exceeds . . . \$75,000 . . . and is between . . .
24 citizens of different States."")." Dkt. # 6. On June 27, 2014, the court dismissed the case
25 for lack of subject matter jurisdiction. Dkt. # 10. The court concluded that since the
26 parties are not residents of different states, the court lacked diversity jurisdiction. *Id.* at 2.
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1 The court also reviewed both of plaintiff's responses, and concluded that plaintiff had
2 failed to plausibly allege claims under Title VI and VII of the Civil Rights Act of 1964.
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4 *Id.*

5 Motions for reconsideration are disfavored and will be granted only upon a
6 "showing of manifest error in the prior ruling" or "new facts or legal authority which
7 could not have been brought to [the court's] attention earlier with reasonable diligence."
Local R. W.D. Wash. CR 7(h)(1).

8 Plaintiff has not met this standard. Nevertheless, since plaintiff is proceeding pro
9 se, the court will address arguments and allegations raised by plaintiff in his motion.

10 On May 9, 2014, plaintiff filed a civil rights complaint under 42 U.S.C. § 1983
11 alleging that somebody at Seattle University changed his transcripts. Dkt. # 4. On June
12 5, 2014, in response to the order to show cause, plaintiff argued that Seattle University
13 violated Title VII of the Civil Rights Act of 1964 when defendant altered his transcripts.
14 Dkt. # 7. On June 20, 2014, plaintiff argued that defendant also violated Title VI of the
15 Civil Rights Act of 1964. Dkt. # 9. In his motion for reconsideration, plaintiff argues
16 that defendant also violated the Family Educational Rights and Privacy Act of 1974
17 ("FERPA") when Seattle University altered his transcripts. Dkt. # 12. The only factual
18 basis provided by plaintiff for all of these claims is that somebody at Seattle University
19 altered his transcripts and that he was an employee at Bon Appetit at the time the
transcripts were altered. Dkt. ## 4, 7, 9. In his motion for reconsideration, plaintiff also
20 alleges that Seattle University is a private college that receives federal funding for
21 students, who as a necessity need financial aid which allows them to pay for their courses
22 of study. Dkt. # 12 at 4.

23 Federal courts have limited jurisdiction, and limitations on the court's jurisdiction
24 must neither be disregarded nor evaded. *Moore v. Maricopa County Sheriff's Office*, 657
25 F.3d 890, 894 (9th Cir. 2011). This court is obligated to determine *sua sponte* whether it
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1 has subject matter jurisdiction. *Id.*; see Fed. R. Civ. Proc. 12(h)(3) (“If the court
 2 determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the
 3 action.”).¹

4 This court has original jurisdiction over claims arising under federal law (28
 5 U.S.C. § 1331) and diversity jurisdiction over cases where the amount in controversy
 6 exceeds \$75,000 **and** the case is between citizens of different states (28 U.S.C. § 1332).
 7 “To invoke a federal court’s subject-matter jurisdiction, a plaintiff needs to provide only
 8 a ‘short and plain statement of the grounds for the court’s jurisdiction.’” *Leite v. Crane
 Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (citing Fed. R. Civ. Proc. 8(a)(1)). “The
 9 plaintiff must allege facts, not mere legal conclusions, in compliance with the pleading
 10 standards established by *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 [. . .] (2007), and
 11 *Ashcroft v. Iqbal*, 556 U.S. 662 [. . .] (2009).” *Id.*

12 Under *Twombly* and *Iqbal*, the complaint’s allegations must “plausibly suggest”
 13 that the pleader is entitled to relief, which asks for more than a sheer possibility that
 14 defendant acted unlawfully. See *Twombly*, 550 U.S. at 555 (plaintiff’s obligation to
 15 provide the grounds of his entitlement to relief requires more than labels and conclusions,
 16 and a formulaic recitation of the elements of a cause of action will not do); *Iqbal*, 556
 17 U.S. at 678 (a claim has facial plausibility when the plaintiff pleads factual content that
 18 allows the court to draw reasonable inferences that defendant is liable for misconduct
 19 alleged). Additionally, the court need not accept legal conclusions as true, and threadbare
 20 recitals of the elements of a cause of action, supported by mere conclusory statements, do
 21 not suffice. *Iqbal*, 556 U.S. at 678.

22 Plaintiff has not alleged that he and Seattle University are citizens of different
 23 states, nor can he as it appears that both he and Seattle University are located in

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 26 ¹ Defendant has not been served with a copy of the complaint or summons, and thus has
 27 not appeared. Defendant’s absence does not preclude the court from determining whether it has
 28 subject matter jurisdiction.

1 Washington State. Thus, the court does not have diversity jurisdiction over his claims.

2 Plaintiff argues that the court has original jurisdiction because he alleges claims
3 under Title VI, VII, and FERPA.

4 Under Title VI, only section 601, the first section of Title VI, provides a private
5 right of action:

6 No person in the United States shall, on the ground of race, color, or
7 national origin, be excluded from participation in, be denied the benefits of,
8 or be subjected to discrimination under any program or activity receiving
Federal financial assistance.

9 42 U.S.C. § 2000d; *see Alexander v. Sandoval*, 532 U.S. 275, 293 (2001) (holding that
10 section 602 of Title VI does not create a private right of action). Section 604, however,
11 limits the use of Title VI as a means of redressing discriminatory employment practices:

12 Nothing contained in this subchapter shall be construed to authorize action
13 under this subchapter by any department or agency with respect to any
employment practice of any employer, employment agency, or labor
organization *except where a primary objective of the Federal financial
assistance is to provide employment.*

14 42 U.S.C. § 2000d-3 (emphasis added). The limitation expressly applies to actions by
15 “department[s] or agenc[ies],” but the Ninth Circuit and other courts construe the
16 limitation to apply to individuals as well. *Temengil v. Trust Terr. of Pac. Islands*, 881
17 F.2d 647, 653 (9th Cir. 1989); *Reynolds v. Sch. Dist. No. 1*, 69 F.3d 1523, 1531 n.8 (10th
18 Cir. 1995) (citing *Temengil* and similar cases). Plaintiff has not alleged that a primary
19 objective of the federal financial assistance was to provide employment. Thus, to the
20 extent that plaintiff attempts to allege a claim for employment discrimination under Title
21 VI, he cannot do so as a matter of law.

22 Nevertheless, section 601 provides a private right of action for intentional
23 discrimination. *Alexander*, 532 U.S. at 280-81. To plead a claim for Title VI, plaintiff
24 must allege that (1) defendant engaged in racial or national origin discrimination, and (2)

1 defendant receives federal financial assistance.² *Fobbs v. Holy Cross Health Sys. Corp.*,
 2 29 F.3d 1439, 1447 (9th Cir. 1994), *overruled in part on other grounds in Daviton v.*
 3 *Columbia/HCA Healthcare Corp.*, 241 F.3d 1131, 1133 (9th Cir. 2001) (en banc).
 4 Although plaintiff alleges that his transcripts from Seattle University were altered “as an
 5 act of discrimination due to [his] religion and race[,]” the court need not accept these
 6 threadbare recitals of the elements of a cause of action, supported by mere conclusory
 7 statements. *Iqbal*, 556 U.S. at 678. Plaintiff has not provided any factual allegations that
 8 plausibly suggest any connection between the alteration of his transcripts and any
 9 purported racial or national origin discrimination.

10 With respect to Title VII, the court reiterates that plaintiff has failed to allege any
 11 facts that connect the alteration of his student transcript with his employment at Bon
 12 Appetit. Indeed, plaintiff has not even alleged whether his employment at Bon Appetit
 13 meant that he was employed by Seattle University.

14 Finally, with respect to FERPA, the Supreme Court has found “that FERPA
 15 creates no private right [of action] to enforce.” *Gonzaga Univ. v. Doe*, 536 U.S. 273, 290
 16 n.8 (2002). Accordingly, students cannot sue their educational institutions for violation
 17 of FERPA under 42 U.S.C. § 1983. *Desyllas v. Bernstein*, 351 F.3d 934, 940 n.2 (9th
 18 Cir. 2003).

19 For all the foregoing reasons, the court DENIES plaintiff’s motion for
 20 reconsideration. The Clerk is directed to terminate all pending motions. The court
 21 considers this case closed, and will disregard future filings.

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 24 ² The court notes that plaintiff’s allegation in his motion for reconsideration that “Seattle
 25 University is a private college that receives federal funding for students, who as a necessity need
 26 financial aid which allows them to pay for their courses of study”(Dkt. # 12 at 4) is an example
 27 of the type of factual allegation that plausibly suggests an entitlement to relief. *See Radcliff v.*
Landau, 883 F.2d 1481, 1483 (1989) (student at a college or university who receives federal
 28 financial assistance subjects the entire school to Title VI coverage).

1 DATED this 4th day of August, 2014.
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7 The Honorable Richard A. Jones
8 United States District Judge
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